

Tripartite consultation regarding international labour standards
and other ILO activities - ILO Convention No. 144 and Recommendation No. 152

Context and purpose of the instruments

1. The adoption by the Conference in 1976 of Convention No. 144 and Recommendation No. 152 was one element in the intensified activities of the ILO to promote tripartite action, both nationally and internationally, in all matters of concern to the ILO. It will be recalled that the impetus for this action came from the adoption by the Conference in 1971 of the resolution concerning the strengthening of tripartism in the overall activities of the ILO.

2. The aim of the instruments is to promote in each member State procedures which ensure effective consultations between representatives of the government, of employers and of workers, on questions relating to international labour standards, and which may also be used for the purpose of consultations on other matters relating to the activities of the ILO.

3. The Convention was drafted in flexible terms, so as to leave each member State free to determine the methods by which the consultations should take place, and specifies only a limited number of questions on which consultations have to be held by States which ratify it. The Recommendation, while retaining the same flexibility as to the consultation procedures, sets out a number of possible methods by which consultations might be undertaken, though these are not exhaustive. It also contains a longer list of questions on which consultations relating to international international labour standards should take place, as well as a list of other matters, relating to the activities of the ILO, to which consultations might be extended.

Scope of the consultations

4. The Convention provides that consultations shall be held on five matters (Article 5, paragraph 1):

(a) Items on the Conference agenda

These consultations should cover both government replies to the questionnaires sent out in preparation for the first discussion of an agenda item and governments' comments on the draft texts drawn up by the Office in preparation for the second discussion. As was made clear during the discussions leading to the adoption of the Convention, the final content of the replies and comments remains the government's responsibility.

(b) Submission to the competent authorities

Article 19, paragraphs 5(b) and 6(b) of the ILO Constitution require member States, within a period of one year or in exceptional circumstances 18 months of their adoption by the Conference, to submit ILO Conventions and Recommendations to "the authority or authorities within whose competence the matter lies for the enactment of legislation or other action". In doing so, governments are expected to make proposals as to the action, if any, to be taken to give effect to the instruments concerned, or to give the reasons why no action is proposed.

This provision of Convention No. 144 requires governments to consult employers' and workers' representatives on the proposals to be made on the occasion of this submission.

(c) Re-examination of unratified Conventions and Recommendations

Once Conventions and Recommendations have been submitted to the competent authority as described above, in the absence of ratification of a Convention, there is no further obligation in regard to them¹. However, changes in national law and practice may make possible the ratification of a Convention or the implementation of a Recommendation to which effect could not be given when they were adopted.

Convention No. 144 therefore requires member States to use the consultation procedures to re-examine, at appropriate intervals, the Conventions and Recommendations to which it has hitherto not been possible to give effect, and to consider what measures might be taken to promote their implementation and ratification as appropriate.

(d) Reports on ratified Conventions

Under article 22 of the ILO Constitution, States have to report to the ILO on the measures taken to give effect to the Conventions they have ratified. Under the current system for the supply of detailed reports on ratified Conventions, they may be requested at two-yearly or five-yearly intervals, depending on the subject-matter of the Convention and the gravity of any problems in its application in a particular country. These reports are examined by the Committee of Experts on the Application of Conventions and Recommendations, an independent body of technically qualified experts, which reports to the Conference each year. Its findings - in the form of observations included in its report and direct requests on less urgent questions which are not published - are sent to the government for reply in the next report on the Convention in question.

Convention No. 144 calls for consultations on "questions arising out of" these reports. The preparatory work makes it clear that it is not intended that consultations should be held in respect of each report, but only for reports on Conventions in respect of which problems of implementation arise.

(e) Proposals for the denunciation of ratified Conventions

The inclusion of this point in the Convention follows the endorsement by the Governing Body in November 1971 (184th Session) of the principle that whenever denunciation is envisaged the government should, before reaching a decision, consult the representative organisations of employers and workers on the problems encountered and measures to be taken with a view to solving them.

5. The Recommendation provides that consultations should be held in addition on the following matters relating to international labour standards (paragraph 5(c) and (e)).

Other measures

(a) Paragraph 5(c) of Recommendation No. 152 provides for consultations "subject to national practice, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives)".

Provisions of the kind referred to in brackets above are contained in many Conventions and Recommendations. Most of them provide for the consultation of representative organisations of employers and workers before laws or regulations to give effect to the instrument in question are adopted, or before recourse is had to permissive clauses or exemptions which may be authorised under its terms. Others provide for the creation of special bodies or machinery and specify that employers' and workers' representatives shall participate in their operation: this is so mainly in the fields of minimum wage-fixing machinery and employment service organisation. A third type of provision requires that employers' and workers' organisations be consulted, or their collaboration be sought, in the implementation of legislative or policy measures to give effect to the instrument in question. This is particularly true of promotional standards, such as those concerning the elimination of discrimination in employment and occupation, or employment policy.

(b) Reports on unratified Conventions and on Recommendations

Article 19, paragraphs 5(e) and 6(d) of the Constitution empower the Governing Body to request member States to report on the position of their law and practice in regard to Conventions which they have not ratified and in regard to Recommendations. It is the Governing Body's practice to request reports of this kind each year on an instrument or group of instruments dealing with a given subject area.

The Recommendation provides for consultations on questions arising out of these reports, as well as of reports on ratified Conventions, dealt with under paragraph 4(d) above.

6. The Recommendation also provides for the possible extension of the consultations, after consultation with the most representative organizations of employers and workers, to other matters, and lists a number of questions to which the consultations might be extended (paragraph 6). They are as follows:

(a) Technical co-operation

The Recommendation refers to "the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates".

This is a matter to which the Conference and Governing Body attach great importance. Following a number of Conference resolutions on the association of employers' and workers' organisations in technical co-operation activities, the Governing Body in November 1972 (188th Session) adopted certain conclusions and recommendations on the subject, including a

recommendation that governments should arrange, in accordance with national practice, periodic tripartite meetings to discuss the position, problems and prospects of ILO technical cooperation activities in the countries concerned.

(b) Resolutions and conclusions of conferences and meetings

The Recommendation envisages the possible extension of consultations to the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, industrial committees and other ILO meetings.

(c) Promotional activities

Finally, the Recommendation refers to the possibility of consultations on the promotion of a better knowledge of the activities of the ILO as an element for use in economic and social policies and programmes.

Consultation procedures

7. The Convention leaves the nature and form of the procedures to be determined in each country in accordance with national practice. It stipulates only that they must be such as to ensure effective consultations on the matters covered by the Convention (see paragraph 4 above) between representatives of the government, and of employers and of workers. Where new procedures are established for the purpose of the Convention, there must be preliminary consultation on their nature and form with the most representative organisations of employers and workers. The Recommendation sets out a number of examples of methods through which the consultations may be undertaken.

8. Before these methods are listed, mention should be made of certain further principles, common to both the Convention and the Recommendation. In the first place, the representatives of employers and workers should be freely chosen by their representative organizations, which should enjoy the right of freedom of association. Secondly, when the consultations are undertaken through bodies, employers and workers should be represented on these bodies on an equal footing. Finally, although it is not expressly stated, the consultations may take place through bodies which are not exclusively tripartite, in that other interests may also be represented or independent qualified persons may be included among the membership. As a further alternative, the government may consult a joint body on which only employers and workers are represented rather than a tripartite body whose membership includes all three interests.

9. Three of the four possible methods of consultation set out in paragraph 2(3) of the Recommendation envisage consultation through constituted bodies. The first method is consultation through a committee specifically constituted for questions concerning the activities of the ILO. The second refers to a body with general competence in the economic, social or labour field - such as the economic and social councils or labour advisory councils which exist in many countries. Thirdly, consultation may take place through a number of bodies with special responsibility for particular subject areas - for example, a committee for maritime affairs for the maritime instruments, or an occupational safety and health committee or a social security

committee for the instruments relating to these sectors. Finally, consultations may take place through written communications where those involved agree that this is appropriate and sufficient. This list is not however intended to be exhaustive; for example, a further possibility suggested in the course of the preparatory work was that for certain questions consultation through an ad hoc committee specifically constituted to deal with a particular matter might be appropriate.

10. Both the Convention and the Recommendation specify that the consultations should take place at appropriate intervals, fixed by agreement, but at least once a year. It was made clear in the preparatory work that the reference to once a year was intended only as a minimum, to ensure that the procedures did not fall into abeyance, and that the frequency of the consultations should depend on the number and complexity of the subjects calling for consultation. Some matters might require to be considered only once a year. Others might not need consideration in a particular year, while yet others might call for a series of consultations over a relatively short period at a given time.

Notes:

¹ There is one exception to this rule, which is described in paragraph 5(b) below.